

FILE COPY

Office - Supreme Court, U. S.

FILED

SEP 11 1947

CHARLES ELMORE ORFLE  
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

Nos. 211-212

ST. LOUIS-SAN FRANCISCO RAILWAY  
COMPANY, DEBTOR,

*Petitioner,*

vs.

CENTRAL HANOVER BANK AND TRUST  
COMPANY, *et al.*,

*Respondents.*

MEMORANDUM IN OPPOSITION TO PETITION  
FOR CERTIORARI

CRAVATH, SWAINE & MOORE  
15 Broad Street  
New York 5, New York

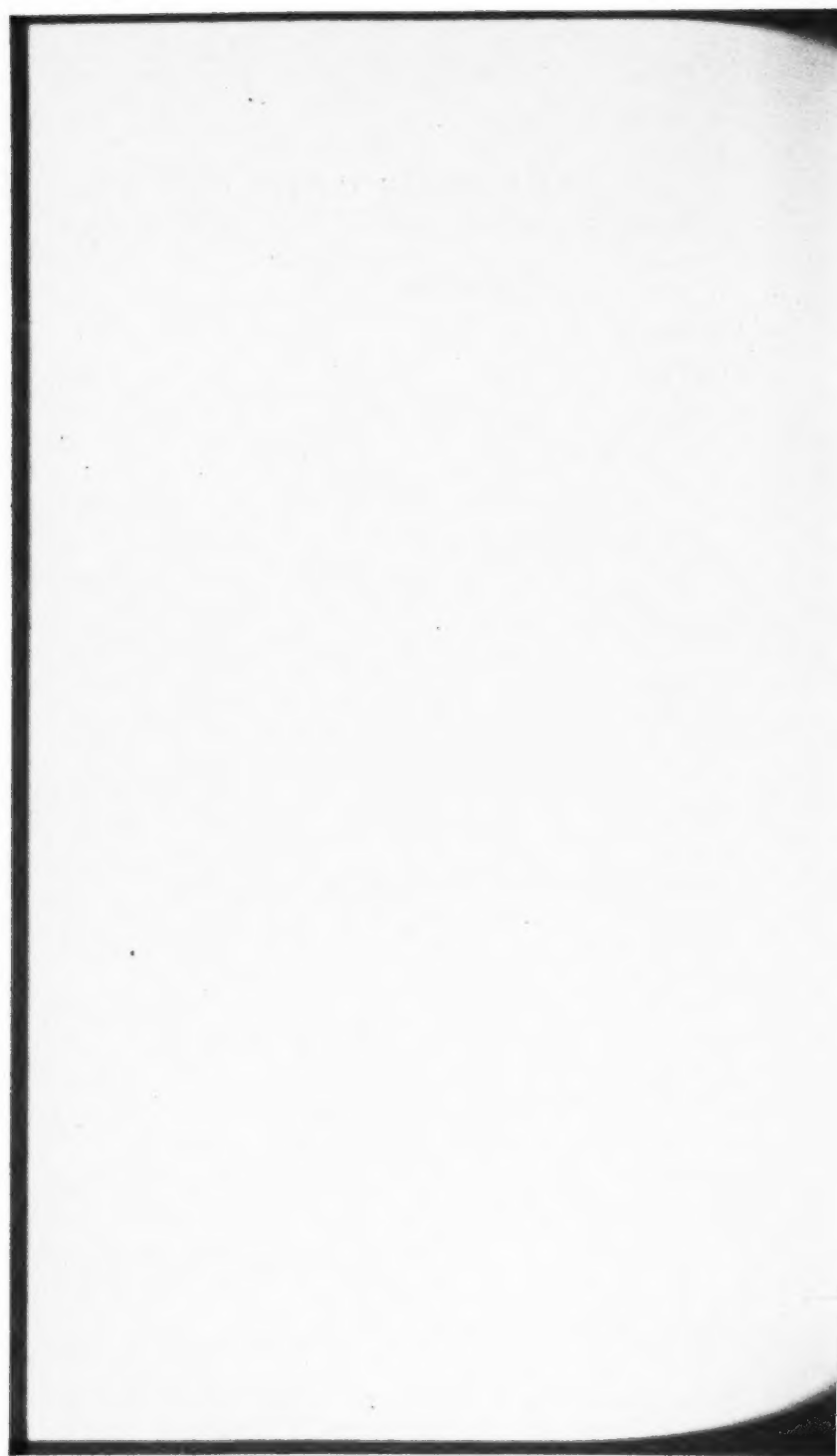
✓ LEONARD D. ADKINS

HUNTON, WILLIAMS, ANDERSON,  
GAY & MOORE  
1003 Electric Building  
Richmond 12, Virginia

∩ GEORGE D. GIBSON

*Attorneys for John W. Stedman, et al.,  
as Reorganization Managers.*

Dated September 10, 1947.



## TABLE OF CONTENTS

JURISDICTION .....	<i>Page</i> 1
OPINION OF COURT BELOW.....	1
STATEMENT .....	1
ARGUMENT .....	5

## TABLE OF AUTHORITIES

Ecker v. Western Pacific R., 318 U. S. 448 (1943).....	<i>Page</i> 4
Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific R., 318 U. S. 523 (1943).....	4
I. C. C. v. Chicago, Rock Island & Pacific R., 218 U. S. 88 (1910)	6
Insurance Group Committee v. Denver and Rio Grande Western R., 329 U. S. 607 (1947).....	2, 5
Reconstruction Finance Corporation v. Denver and Rio Grande Western R., 327 U. S. 495 (1946).....	5
Rev. Stat. Mo., Art. 2, Ch. 33, §5289C.....	3
Bankruptcy Act, §77, 11 U.S.C., §205.....	1
Judicial Code, §240(a), 28 U. S. C., §347.....	1



## **MEMORANDUM IN OPPOSITION TO PETITION FOR CERTIORARI**

### **Jurisdiction**

The date of the orders sought to be reviewed is April 16, 1947.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C., Sec. 347).

### **Opinion of Court Below**

No opinion was delivered below on the orders appealed from (dismissing as insubstantial two appeals by Petitioner, one from an order directing consummation of a reorganization and one from an order discharging the trustee). Previous opinions of the court below (the Circuit Court of Appeals for the Eighth Circuit) on the same subject matter are reported at 153 F. 2d 312 (affirming the approval of the plan of reorganization) and 156 F. 2d 161, reprinted at R. 3 (dismissing an appeal from the confirmation of the Plan).

### **Statement**

The petition presents again, in cumulative form, all the questions submitted to this Court by previous petitions that were denied.

The issues concern the reorganization of St. Louis-San Francisco Railway Company under Section 77 of the Bankruptcy Act. Petitioner complains because the amount of the new capitalization is much less than the total claim of bondholders and thus provides no recognition for the holders of the old stock. That complaint was rejected by the Interstate Commerce Commission, after extensive proceedings, when

it approved the Plan (*St. Louis-San Francisco Railway Company Reorganization*, 257 I. C. C. 399, 1944) and refused to modify it (257 I. C. C. 717, 1944). Over Petitioner's opposition, the Plan was approved by the District Court for the Eastern District of Missouri, Eastern Division (*In re St. Louis-San Francisco R.*, 59 F. S. 417, 1945). Its order of approval was affirmed by the Circuit Court below (*Brooks v. St. Louis-San Francisco R.*, 153 F. 2d 312, 1946, reh'g den., *id.*, 1946). Petitioner sought certiorari to review that decision and it was denied (*St. Louis-San Francisco R. v. Chase National Bank*, 328 U. S. 868, 1946, reh'g den., 329 U. S. 820, 1946).

The Plan, being submitted for a vote by all participating classes and receiving virtually unanimous acceptance from each, came on to be heard again before the District Court on the question of confirmation. Over Petitioner's opposition, the Plan was confirmed on November 15, 1945. An appeal by Petitioner was docketed and dismissed by the Circuit Court below as presenting no substantial question (*St. Louis-San Francisco R. v. Brewster*, 156 F. 2d 161, 1946, reh'g den., *id.*, 1946, reprinted at R. 3). Petitioner sought certiorari to review that action, and it was denied (*St. Louis-San Francisco R. v. Brewster*, 329 U. S. 775, 1946).

Petitioner then filed in the District Court a petition modeled after, and in effect indistinguishable from, that later considered by this Court in *Insurance Group Committee v. Denver and Rio Grande Western R.*, 329 U. S. 607 (1947), seeking a remand to the Commission because of asserted changes of condition in order that a wholly new plan might be formulated (R. 9). Soon afterward, the Reorganization Managers (appointed to supervise the mechanics of consummation) filed their petition in the District Court for

approval of the documents and arrangements incident to consummation of the Plan (R. 29). Both petitions were heard by the District Court on December 10, 1946, and disposed of on December 12. The petition of the Reorganization Managers was granted by a Consummation Order (R. 41) and the petition of Petitioner was denied by an Order Denying Remand, embodying also an opinion (*In re St. Louis-San Francisco R.*, 68 F. S. 921, reprinted at R. 25). The next day the District Court denied Petitioner's motion for an order staying all proceedings for consummation of the Plan pending appeal from the Order Denying Remand (R. 81).

Petitioner then went to the Circuit Court below asking a stay of all proceedings for consummation of the Plan until completion of its appeal from the Order Denying Remand. The application was heard on full argument of counsel on December 17, 1946, and denied on December 19 (R. 207).

Petitioner then came to this Court seeking a similar order. In doing so it reasserted its previous objections to the Plan and added (R. 234) new objections to the consummation of the Plan in accordance with its terms through the corporate instrumentality of the old company, after suitable amendment to its charter by action of the Reorganization Managers under authority of a Missouri statute permitting charter amendments without stockholder action to effectuate confirmed plans for reorganization under the Bankruptcy Act (Rev. Stat. Mo., Art. 2, Ch. 33, Sec. 5289C, July 1, 1946, reprinted at R. 232). The stay was denied by this Court on December 23, 1946 (*St. Louis-San Francisco R. v. Stedman*, 329 U. S. 689, reprinted at R. 208).

The Plan was then consummated on January 2, 1947, by turning over the properties to the Company (with its charter so amended to cancel the old stock and define the

terms of the new) and issuing the new securities provided for by the Plan.

Petitioner nevertheless persevered in its appeal to the Circuit Court below from the Order Denying Remand. After argument, that court granted a motion (R. 163), by the undersigned among others, to dismiss the appeal as presenting no substantial question (February 11, 1947, 160 F. 2d 109, reprinted at R. 278). Petitioner asked for a rehearing and that was denied on March 5, 1947 (R. 243).

Petitioner did not ask for certiorari to review that action. The time for doing so was not extended and thus expired on June 5, 1947, before the petition was filed herein.

In the meantime Petitioner moved the District Court for a rehearing of the Consummation Order (R. 153). Upon its denial on February 7, 1947 (R. 160), Petitioner appealed to the Circuit Court below. That court, after argument, granted a motion (R. 209), by the undersigned among others, to docket and dismiss the appeal as presenting no substantial issue (April 16, 1947, R. 279). That is one of the two orders sought to be reviewed here. The other is an order of the same date by the same court (R. 280) granting a similar motion (R. 235) to dismiss an appeal by Petitioner from an order of the District Court entered March 14, 1947 (R. 151), approving the final report of the Debtor Trustee (R. 143) and discharging him.

Thereafter a final report of the Reorganization Managers to the District Court on the completion of the reorganization and the distribution of the new securities (R. 250) was approved and they were discharged (July 7, 1947, R. 271), with authority, however, to resist this litigation (R. 277). No appeal was taken from that order.



### Argument

This reorganization was only a matter of applying to a particular set of facts the principles established by this Court in *Ecker v. Western Pacific R.*, 318 U. S. 448 (1943), and *Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific R.*, 318 U. S. 523 (1943). So it never presented any question of general importance. The Court made that clear by denying certiorari to review the approval of the Plan and its confirmation.

More particularly, the principles governing the disposition of a petition for a remand to the Commission after confirmation of a plan were announced by this Court in *Insurance Group Committee v. Denver and Rio Grande Western R.*, 329 U. S. 607 (1947). They are so clearly governing here that Petitioner never sought certiorari to review the order denying the petition for remand by which its opposition to the Plan was pleaded. The time for such an application has expired.

The Order Denying Remand having thus become final, Petitioner may not be heard to attack the Plan in this appeal.

So the only issue that might be presented now is whether the Consummation Order permissibly implemented the Plan in approving the documents and arrangements for its consummation. But none of the questions sought to be raised under this issue is of general interest. Moreover, Petitioner is not qualified to raise any of them, for, representing only the holders of the old stock, who do not participate under the Plan, it has no interest to complain of the details of the new arrangements. Thus the Court said in *Reconstruction Finance Corporation v. Denver and Rio Grande Western R.*, 327 U. S. 495, 520 (1946):

" . . . the objection of a stockholder . . . [and thus of a debtor corporation as representative of stockholders] to a voting trust for future control of the debtor [and similarly to the other matters involved in the issuance of new securities] would be ineffective because this stockholder is eliminated from the reorganization by the valuation of the property and allocation of securities." (Words in brackets added.)

This follows from ancient principle:

" . . . we will not listen to a party who complains of a grievance which is not his." (*I. C. C. v. Chicago, Rock Island & Pacific R.*, 218 U. S. 88, 109, 1910)

Petitioner, therefore, is not entitled to oppose either the Plan or the method of its consummation. Nothing else is involved.

The petition should, accordingly, be denied.

September 10, 1947.

Respectfully submitted,

CRAVATH, SWAINE & MOORE  
15 Broad Street  
New York 5, New York

LEONARD D. ADKINS

HUNTON, WILLIAMS, ANDERSON,  
GAY & MOORE  
1003 Electric Building  
Richmond 12, Virginia

GEORGE D. GIBSON

*Attorneys for John W. Stedman, et al.,  
as Reorganization Managers.*